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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
07/158,652	02/22/1988	MARC ALIZON	PAST-010-A	3369

7590 08/28/2003

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EXAMINER
FREDMAN, JEFFREY NORMAN

ART UNIT	PAPER NUMBER
1634	

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	07/158,652	ALIZON ET AL.	
	Examin r	Art Unit	
	Jeffrey Fredman	1634	

--The MAILING DATE of this communication appears on the cover sh et with th correspond nc address --

THE REPLY FILED 01 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *142-149*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Jeffrey Fredman
Primary Examiner
Art Unit: 1634

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that the new claim avoids the prior art rejection because it encompasses 200 nucleotides of an SstI fragment which Applicant argues is not taught by Chang. Applicant appears to be incorrect in this statement. While Chang does teach that there is a subclone that lacks the SstI 200 base pair fragment, Chang's full paragraph states "In another embodiment of this invention, lambda10 clones harboring HTLV-III DNA are cloned from the replicated form of the virus. As the retrovirus is replicating, double stranded DNA is being produced. Cuts are made in the cloned HTLV-III DNA with the restriction enzyme SstI. (Figure 1a) Because there are two SstI recognition sites within the LTR of HTLV-III DNA: one LTR region is not present in the cloned DNA sequence removed from the lambda10 vector. As a result, a small (approximately 200 bp) fragment of the HTLV-III DNA is missing (see page 8, last two sentences to page 9, first paragraph of 659,339 application)"

What this quote makes clear is that the Lambda10 clone has the complete HTLV-III DNA. When the DNA is cloned from the Lambda10 vector using SstI, then 200 nucleotides are lost. However, the full paragraph indicates that there is a lambda 10 vector which comprises the entire virus prior to the cuts. The statement "Cuts are made in the cloned HTLV-III DNA" supports this view. The HTLV-III DNA is already cloned and then, if cuts are made with SstI, 200 nucleotides will be lost. Therefore, the reference teaches the full length HTLV-III cloned DNA sequence, which inherently anticipates the claims for the reasons of record.

In this case, Applicant also makes the separate argument that certain of the subclones are missing specific sequences. This argument is not persuasive since the full length lambda10 clone has the full length virus. Further, the rejection is not made over the sequence but over the clone. If, in the process of sequecing the clone, Chang made errors, these do not alter the product itself which remains anticipatory of the claims. Therefore, this argument is not found persuasive.